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ROBERT L. TREMPER, JR.
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ATTORNEY GENERAL DAVIS
DEPT. OF NATURAL RESOURCES

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

PORT WASHINGTON PROPERTIES, INC.,)
a Washington corporation,)

Plaintiff,)

v.)

FIREMAN'S FUND INSURANCE COMPANY,)
a California corporation; SAFETY)
MUTUAL CASUALTY CORPORATION, a)
Missouri corporation; CONSOLI-)
DATED AMERICAN INSURANCE)
COMPANY, a South Carolina)
corporation; ALBANY INSURANCE)
COMPANY, a New York corporation;)
SETON, JOHNSON & ODELL, INC.,)
an Oregon professional)
corporation; and WARD MULLER,)
a Washington resident,)

Defendants.)

NO. 85 2 01592 6

COMPLAINT FOR DECLARATORY
JUDGMENT AND/OR
FOR MONEY DAMAGES

COMES NOW the plaintiff in the above-entitled case and for
causes of action against the above defendants, alleges as
follows:

A. PARTIES

1. Plaintiff, Port Washington Properties, Inc., a
Washington corporation, is and was the owner of a leasehold
estate and developer of the marina facility constructed thereon
in the City of Bremerton called "Port Washington Marina,"

COMPLAINT FOR DECLARATORY
JUDGMENT AND/OR MONEY DAMAGES

FOULDS, FELKER, PIERSON, RYDER & McHUGH, INC. P. S.
ATTORNEYS AT LAW

1 hereinafter "marina." Such plaintiff was named as an insured
2 under one or more of the policies described herein.

3 2. Fireman's Fund Insurance Company, a California
4 corporation, hereinafter "Fireman's Fund," issued a policy of
5 insurance to plaintiff herein providing third-party liability
6 coverage and having limits of \$500,000.

7 3. Safety Mutual Casualty Corporation, a Missouri
8 corporation, hereinafter "Safety Mutual," issued a policy of
9 insurance to plaintiff herein providing excess or umbrella
10 liability coverage of \$1,000,000 over the limits of the
11 coverage of defendant Fireman's Fund.

12 4. Consolidated American Insurance Company, a South
13 Carolina corporation, hereinafter "Consolidated American,"
14 issued a policy of insurance for benefit of plaintiff herein
15 providing third-party liability coverage and having limits of
16 \$500,000.

17 5. Albany Insurance Company, a New York corporation,
18 hereinafter "Albany," issued a policy of insurance to one or
19 more of the plaintiff herein providing first-party coverage for
20 physical damage to plaintiff's marina facilities, including
21 beach area and other approaches, and having limits of \$800,000.

22 6. Seton, Johnson & Odell, Inc., an Oregon professional
23 corporation, hereinafter "SJO," provided engineering services
24 to plaintiff with respect to development, design and
25 construction of the marina.

1 7. Ward Muller, a Washington resident, hereinafter
2 "Muller," provided professional services to plaintiff with
3 regard to land surveying required for construction of the
4 marina.

5 B. COMMON BACKGROUND FACTS

6 1. Plaintiff is the owner and developer of a marina
7 facility called "Port Washington Marina," hereinafter "marina,"
8 which consists of various structures and a floating dock system
9 having 80 slips and is located in the City of Bremerton, lying
10 adjacent to Port Washington Narrows near Anderson Cove.

11 2. Plaintiff holds a long-term lease from the State of
12 Washington (Department of Natural Resources) with regard to
13 occupancy of the tideland properties upon which or adjacent to
14 which the marina was constructed.

15 3. City of Bremerton, the owner of certain waste water
16 facilities, operated a high-pressure sewer pipeline across the
17 tidelands adjacent to the marina and caused an eight-inch PVC
18 pipeline to be installed therein. In connection with such
19 construction, Bremerton obtained from the State of Washington a
20 grant of easement under a certain agreement (No. 45730) dated
21 November 1, 1983. By reason of such grant, Bremerton possessed
22 the rights of quiet enjoyment with respect to use of its
23 high-pressure sewer line.

24 4. During the first quarter of 1984, while there were
25 exceptionally low tides, there was observed substantial
26 sloughage of beach materials along the dredged slopes of the
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1 marina. Sinkage along the beach was noticed exposing or
2 threatening to expose the high-pressure sewer line of the City
3 of Bremerton then in operation.

4 5. The aforesaid sloughage also caused the floating dock
5 system of the marina to become hung up at various and different
6 places, threatening the integrity of such flotation system.
7 Such system was designed to rise and fall with the tide and was
8 kept in place by permanent pilings.

9 6. Because of the apparent rate of beach erosion, City of
10 Bremerton feared that the beach instability was threatening its
11 high-pressure sewer line. Concern was also voiced by Bremerton
12 that an unstable beach condition posed a potential hazard to
13 the upland hillside above the beach whereon was located a
14 75-unit apartment complex named "Colonial Manner Apartments."
15 Long-term beach erosion has an alleged propensity to cause land
16 slides along the upland slope.

17 7. City of Bremerton commenced an investigation of the
18 beach condition adjacent to the marina after the first quarter
19 of 1984 and continued to monitor such condition thereafter.
20 Numerous tests and examinations were made of the beach and
21 upland slope by its consultants, CH2M Hill and William Shannon,
22 a geotechnical engineer. Such tests included inclinometer
23 studies of the hillside, sample soil borings along the beach
24 and monitoring of beach elevations.

25 8. By reason of the aforesaid investigation, City of
26 Bremerton, through its Engineering Department, determined that
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1 a substantial hazard existed to its high-pressure pipeline by
2 reason of predictable long-term beach erosion that, without
3 intervention or modification, would destabilize the pipeline
4 and cause raw sewage to be emptied into Port Washington
5 Narrows. Bremerton has also claimed present interference with
6 its easement rights.

7 9. Plaintiff is informed and believes and based thereon
8 alleges that the unstable condition of the beach described
9 herein resulted from the dredging operations to construct the
10 marina and has been exacerbated by erosion caused by tidal
11 action. Such factors operating together have set in motion the
12 chain of events causing the injury alleged herein.

13 10. Demand was made upon plaintiff to undertake all
14 measures necessary to correct the instability of the beach.
15 Measures discussed included installation of a retaining wall or
16 sheet piling along the toe of the beach. Throughout 1984,
17 while undertaking some temporary protective measures along the
18 beach front, plaintiff attempted to explore with Bremerton the
19 nature of corrective measures which would be acceptable for
20 control of beach erosion.

21 11. Plaintiff lacks the resources to undertake the extent
22 of corrective measures required by City of Bremerton. The cost
23 of installation of a retaining wall has been estimated to range
24 between \$250,000 and \$300,000. Design of and plans for such
25 protection were deemed by Bremerton to be experimental and
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1 without guarantee of long-term success. Estimates were not
2 sought on incidental costs and future maintenance.

3 12. On numerous occasions, City of Bremerton threatened
4 adverse action against plaintiff to revoke the operating permit
5 for the marina. On information and belief, plaintiff alleges
6 that Bremerton has not instituted formal adverse action against
7 the owners and developers of the marina to correct the alleged
8 hazard to its pipeline and the upland hillside because of
9 Bremerton's awareness of plaintiff's insurance coverage and its
10 expectation that the carriers providing plaintiff's coverage
11 would investigate the extent of damage and cure all current and
12 future injury.

13 13. As a direct and proximate result of the acts or
14 omissions of defendants herein, the value of plaintiff's marina
15 facilities and approaches thereto have become substantially
16 depreciated. Plaintiff shall be obliged to expend substantial
17 sums to assure the integrity of its floating dock system and
18 avert the risk of catastrophic injury to property of third
19 parties. Plaintiff estimates that the costs of investigating
20 and correcting the unstable beach condition resulting from
21 accelerated erosion shall exceed \$500,000. Plaintiff has also
22 lost substantial business opportunity in developing property
23 adjacent to the marina. Leave of Court shall be sought to
24 amend this Complaint to state the precise amount of damages
25 when the same become ascertainable or upon proof of same at the
26 time of trial.

1 C. ALLEGATIONS AS TO DEFENDANT FIREMAN'S FUND

2 FIRST CAUSE OF ACTION
3 Declaratory Judgment

4 1. Plaintiff was issued "General Liability Multi-Cover
5 Plus" coverage under Policy No. 2-86 LA 325 68 85, having an
6 effective date commencing October 14, 1985 and ending
7 October 14, 1987. Such insurance policy of defendant Fireman's
8 Fund provided coverage for third-party loss resulting from acts
9 or omissions of plaintiff.

10 2. On or after May 1, 1985, plaintiff gave notice to
11 defendant Fireman's Fund of a claim arising from construction
12 of the marina facility within the City of Bremerton in that
13 dredging operations employed in construction of the marina
14 undermined the stability of the beach property across which
15 there had been installed a high-pressure sewer pipeline of the
16 City of Bremerton.

17 3. Plaintiff informed Fireman's Fund that City of
18 Bremerton had ordered plaintiff to take all necessary measures
19 to correct the beach instability which allegedly interfered
20 with the property rights of Bremerton and threatened to disrupt
21 operation of and service through the eight-inch PVC piping of
22 the high-pressure sewer line which was part of Bremerton's
23 waste water system. Bremerton had determined through its City
24 Engineering Department that the beach conditions presented a
25 clear and present danger to the operation of the pipeline.
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1 4. City of Bremerton has specifically claimed that the
2 unstable beach condition at the marina is presently interfering
3 with easement rights of Bremerton under a grant of easement
4 from the State of Washington (Department of Natural Resources)
5 (Agreement No. 45730) dated November 1, 1983.

6 5. City of Bremerton has alleged that commencing in the
7 first quarter of 1984, sometime after plaintiff's marina was
8 open to the public, a geotechnical investigation was undertaken
9 by Bremerton to determine the extent of and seriousness of
10 beach movement adjacent to the marina. Based upon such
11 investigation, Bremerton determined that serious beach erosion
12 had been caused by the dredging operations used to construct
13 the marina. Such erosion was deemed progressive and had been
14 accelerated by dredging operations on plaintiff's behalf and
15 was jeopardizing the stability of the high-pressure pipeline.
16 Demand was made upon plaintiff to take corrective action.

17 6. Plaintiff is without adequate resources to undertake
18 an investigation of its own to contest the determination of the
19 City of Bremerton with regard to the present hazard posed to
20 its pipeline by an unstable beach condition. Plaintiff has
21 demanded that defendant carrier fully investigate the extent of
22 its alleged liability.

23 7. Defendant Fireman's Fund has refused to acknowledge
24 the existence of any claim for benefits under its policy
25 because of the alleged liability of plaintiff to City of
26 Bremerton or other adjacent land owners. Defendant carrier
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1 does not recognize that any damages have occurred under the
2 terms of the policy for which plaintiff has become legally
3 obligated to pay.

4 8. A dispute has arisen between plaintiff and defendant
5 Fireman's Fund with respect to the obligation of the carrier to
6 investigate and indemnify plaintiff from the claims of the City
7 of Bremerton of interference with its property rights and
8 placement of its sewer line in hazard. Plaintiff contends that
9 the defendant carrier is obliged to investigate the extent of
10 current or future damage to Bremerton's property rights and pay
11 as policy benefits the amount necessary to correct such
12 injury. The defendant carrier denies such obligations.

13 9. Plaintiff has no adequate remedy at law and no
14 appropriate means other than this action for declaratory
15 judgment to determine its rights under the aforesaid policy of
16 insurance issued them as insureds.

17 D. ALLEGATIONS AS TO DEFENDANT SECURITY MUTUAL

18 FIRST CAUSE OF ACTION
19 Declaratory Judgment

20 1. Plaintiff was issued commercial umbrella coverage under
21 Policy No. R 11687 WA, having an effective date commencing
22 October 14, 1984, and ending October 14, 1985. Such insurance
23 policy of defendant Security Mutual provided excess liability
24 coverage for third-party loss resulting from acts or omissions
25 of plaintiff.

1 2. On or about May 1, 1985, plaintiff requested the agent,
2 Corroon & Black, to give notice to the various carriers
3 supplying insurance for the marina of plaintiff's claim. On
4 information and belief, plaintiff alleges that such notice to
5 defendant carrier may have been delayed through inadvertence of
6 the aforesaid agent. Such notice was later given to defendant,
7 and no communication confirming receipt of such claim has been
8 received by plaintiff.

9 3. On or after May 1, 1985, plaintiff gave notice to
10 defendant Security Mutual of a claim arising from construction
11 of the marina facility within the City of Bremerton in that
12 dredging operations employed in construction of the marina
13 undermined the stability of the beach property across which
14 there had been installed a high-pressure sewer pipeline of the
15 City of Bremerton.

16 4. Plaintiff informed Security Mutual that City of
17 Bremerton was directing plaintiff to take all necessary
18 measures to correct the beach instability which allegedly
19 interfered with the property rights of Bremerton and threatened
20 to disrupt operation of and service through the eight-inch PVC
21 piping of the high-pressure sewer line which was part of
22 Bremerton's waste water system. Bremerton had determined
23 through its City Engineering Department that the beach
24 conditions presented a clear and present danger to the
25 operation of the pipeline.

1 5. City of Bremerton has specifically claimed that the
2 unstable beach condition at the marina was presently
3 interfering with easement rights of Bremerton under a grant of
4 easement from the State of Washington (Department of Natural
5 Resources) (Agreement No. 45730) dated November 1, 1983.

6 6. City of Bremerton has alleged that commencing in the
7 first quarter of 1984, sometime after plaintiff's marina was
8 open to the public, a geotechnical investigation was undertaken
9 by Bremerton to determine the extent of and seriousness of
10 beach movement adjacent to the marina. Based upon such
11 investigation, Bremerton determined that beach erosion had been
12 caused by the dredging operations used to construct the
13 marina. Such erosion was deemed progressive and had been
14 accelerated by dredging operations on plaintiff's behalf and
15 was jeopardizing the stability of the high-pressure pipeline.
16 Demand was made upon plaintiff to take corrective action.

17 7. Plaintiff is without adequate resources to undertake
18 an investigation of its own to contest the determination of the
19 City of Bremerton with regard to the present hazard posed to
20 its pipeline by an unstable beach condition. Plaintiff has
21 demanded that defendant carrier fully investigate the extent of
22 its alleged liability.

23 8. Defendant Security Mutual has refused to acknowledge
24 the existence of any claim for benefits under its policy
25 because of the alleged liability of plaintiff to City of
26 Bremerton or other adjacent land owners. Defendant carrier has
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1 completely failed to communicate with plaintiff relating to the
2 claim filed by plaintiff.

3 9. A dispute has arisen between plaintiff and defendant
4 Security Mutual with respect to the obligation of the carrier
5 to indemnify plaintiff from the claims of the City of Bremerton
6 of interference with its property rights and placement of its
7 sewer line in hazard. Plaintiff contends that the defendant
8 carrier is obliged to pay as policy benefits the amount
9 necessary to correct current or future injury to Bremerton's
10 property rights to the extent that such damages exceed the
11 limits of the primary liability coverage of defendant Fireman's
12 Fund or are not covered by such underlying insurance and are
13 not otherwise excluded by Security Mutual's policy.

14 10. Plaintiff has no adequate remedy at law and no other
15 appropriate means other than this action for declaratory
16 judgment to determine its rights under the aforesaid policy of
17 insurance as an insured.

18 E. ALLEGATIONS AS TO DEFENDANT CONSOLIDATED AMERICAN

19 FIRST CAUSE OF ACTION
20 Declaratory Judgment

21 1. Plaintiff was issued general liability coverage under
22 Policy No. CAP 17 99 66, having an effective date commencing
23 August 10, 1983, and ending August 10, 1985. Such insurance
24 policy of defendant Consolidated American provided coverage for
25 third-party loss resulting from acts or omissions of
26 plaintiff. On information and belief, plaintiff alleges that
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1 such coverage was terminated or cancelled effective January 15,
2 1984.

3 2. At or about the time of construction of the marina,
4 Port Washington Properties, Inc., for the purpose of
5 constructing the marina, was doing business as Port Washington
6 Construction, named as insured under the policy issued by
7 Consolidated American. Mark Cleven, a shareholder and
8 president of Port Washington Properties, Inc., plaintiff
9 herein, had previously done business from time to time under
10 the name of Port Washington Construction before construction of
11 the marina. Mr. Cleven, an individual, was also named as
12 insured under the aforesaid Consolidated American policy.

13 3. On or after May 1, 1985, plaintiff gave notice to
14 defendant Consolidated American of a claim arising from
15 construction of the marina facility within the City of
16 Bremerton in that dredging operations employed in construction
17 of the marina undermined the stability of the beach property
18 across which there had been installed a high-pressure pipeline
19 of the City of Bremerton.

20 4. Plaintiff informed Consolidated American that City of
21 Bremerton had ordered plaintiff to take all necessary measures
22 to correct the beach instability which allegedly interfered
23 with the property rights of Bremerton and threatened to disrupt
24 operation of and service through the eight-inch PVC piping of
25 the high-pressure sewer line which was part of Bremerton's
26 waste water system. Bremerton had determined through its City
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1 Engineering Department that the beach conditions presented a
2 clear and present danger to the operation of the pipeline.

3 5. City of Bremerton has specifically claimed that the
4 unstable beach condition at the marina was presently
5 interfering with easement rights of Bremerton under a grant of
6 easement from the State of Washington (Department of Natural
7 Resources) (Agreement No. 45730) dated November 1, 1983.

8 6. City of Bremerton has alleged that commencing in the
9 first quarter of 1984, months after plaintiff's marina was open
10 to the public, a geotechnical investigation was undertaken by
11 Bremerton to determine the extent of and seriousness of beach
12 movement adjacent to the marina. Based upon such
13 investigation, Bremerton determined that beach erosion was
14 progressive and had been accelerated by dredging operations on
15 plaintiff's behalf and that such erosion was jeopardizing the
16 stability of the high-pressure pipeline. Demand was made upon
17 plaintiff to take corrective action.

18 7. Plaintiff is without adequate resources to undertake
19 an investigation of its own to contest the determination of the
20 City of Bremerton with regard to the present hazard posed to
21 its pipeline by an unstable beach condition. Plaintiff has
22 demanded that defendant carrier fully investigate the extent of
23 its potential risk.

24 8. Defendant Consolidated American has refused to
25 acknowledge the existence of any claim for benefits under its
26 policy because of the liability of plaintiff to City of
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1 Bremerton or other adjacent land owners. Defendant carrier has
2 allowed more than seven (7) months to elapse without
3 determining to accept or deny coverage.

4 9. A dispute has arisen between plaintiff and defendant
5 Consolidated American with respect to the obligation of the
6 carrier to investigate and indemnify plaintiff from the claims
7 of the City of Bremerton of interference with its property
8 rights and placement of its sewer line in hazard. Plaintiff
9 contends that the defendant carrier is obliged to investigate
10 the extent of current or potential damage to Bremerton's
11 property rights and pay as damages the amount necessary to
12 correct current or future injury. The defendant carrier denies
13 such obligations.

14 10. Plaintiff has no adequate remedy at law and no
15 appropriate means other than this action for declaratory
16 judgment to determine its rights under the aforesaid policy of
17 insurance as an insured.

18 F. ALLEGATIONS AS TO DEFENDANT ALBANY

19 FIRST CAUSE OF ACTION
20 Declaratory Judgment

21 1. Plaintiff was issued first party coverage for physical
22 damage under Policy No. IM 013476 ("Docks & Piers Physical
23 Damage Form") having an effective date commencing October 14,
24 1984, and ending October 14, 1985. Such insurance policy
25 provided coverage for physical damage to plaintiff's marina
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1 facilities, including the beach area and other approaches to
2 the floating docks, piers, moorages and pertinent structures.

3 2. On or after May 1, 1985, plaintiff gave notice to
4 defendant Albany of a claim for property damage to the marina
5 facilities and approaches arising from erosion caused by tidal
6 action upon the beach bank and slopes adjacent to the floating
7 dock system.

8 3. During the first quarter of 1984, while there were
9 exceptionally low tides, there was observed substantial
10 sloughage of beach materials along the dredged slopes of the
11 marina. Such sloughage caused the floating dock system of the
12 marina to become hugh up at various and different places,
13 threatening the integrity of such flotation system. Such
14 system was designed to rise and fall with the tides and was
15 kept in place by permanent pilings.

16 4. Upon investigation of the beach condition, City of
17 Bremerton determined through its Engineering Department that
18 there was serious beach erosion and such erosion was
19 progressive.

20 5. Demand was made by City of Bremerton upon plaintiff to
21 undertake all measures necessary to correct the instability of
22 the beach. Measures discussed included installation of a
23 retaining wall or sheet piling along the toe of the beach.
24 Throughout 1984, while undertaking some temporary protective
25 measures along the beach front, plaintiff attempted to explore
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1 with Bremerton the nature of corrective measures that would be
2 acceptable for control of beach erosion.

3 6. Plaintiff lacks the resources to undertake the extent
4 of corrective measures necessary to control erosion. The cost
5 of installation of a retaining wall has been estimated to range
6 between \$250,000 and \$300,000. Design of and plans for such
7 protection were deemed by Bremerton to be experimental and
8 without guarantee of long-term success. Estimates were not
9 sought on incidental costs and future maintenance.

10 7. Defendant Albany has refused to acknowledge the
11 existence of any claim for benefits under its policy with
12 respect to physical damage of the marina facilities and
13 approaches thereto, including the beach area.

14 8. A dispute has arisen between plaintiff and defendant
15 Albany with respect to the obligation of the carrier to
16 investigate the extent of physical damage and indemnify
17 plaintiff for the cost of repairing and restoring the marina
18 facilities and approaches thereto, including the beach area.
19 Defendant carrier denies such obligations.

20 9. Plaintiff has no adequate remedy at law and no other
21 appropriate means than this action for declaratory judgment to
22 determine its rights under the aforesaid policy of insurance as
23 an insured.
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1 G. ALLEGATIONS AS TO DEFENDANT SJO

2 FIRST CAUSE OF ACTION
3 Breach of Contract

4 1. Plaintiff retained defendant engineer SJO to
5 participate in the design and construction of the marina. Such
6 employment was reflected in various letter agreements dated
7 January 31, 1982, August 16, 1982, and August 25, 1982,
8 hereinafter collectively the "contract."

9 2. Pursuant to such contract, defendant engineer SJO
10 reviewed preliminary design plans for the marina and determined
11 that such plans might be modified to increase the number of
12 slips to 80. Such redesign of the marina and flotation system
13 caused such improvements to encroach closer to the shoreline.
14 Defendant engineer prepared a site plan, dredging plan and
15 float and pile and ramp sketch for the marina development.

16 3. By reason of the aforesaid contract, defendant
17 engineer SJO were obliged to undertake certain surveys of the
18 prospective site and evaluate the need for bank protection,
19 break-water and other features. Such measures related to the
20 need for shoreline protection arising from dredging operations.

21 4. During the construction phase of the marina
22 development, defendant engineer exercised certain supervision
23 over the work, visited the site during construction on a
24 regular basis, issued directives to the contractors with regard
25 to the manner of the work, and determined compliance of the
26 dredging operations with the plans it authored.

1 5. Defendant breached its contractual obligations by
2 failing to properly consider the need for shoreline protection
3 and made no recommendation to plaintiff of measures suitable to
4 control beach erosion or the integrity of dredged slopes.

5 6. After completion of construction of the marina,
6 progressive deterioration of the beach area manifested itself
7 due to the weakened condition of the dredged slopes and erosion
8 caused by tidal action. Such unstable beach condition is
9 currently alleged to interfere with property rights of the City
10 of Bremerton and threatens catastrophic injury to the tidelands
11 and Port Washington Narrows if the high pressure sewer line of
12 City of Bremerton were disrupted.

13 7. By reason of the aforesaid breach of contract,
14 plaintiff has suffered substantial damages herein described.

15 SECOND CAUSE OF ACTION
16 Professional Negligence

17 1. Plaintiff realleges paragraphs 1 through 7, inclusive,
18 of the First Cause of Action herein, and, by reference thereto,
19 makes them part hereof as though fully set forth.

20 2. Plaintiff is informed and believes and based thereon
21 alleges that defendant is a registered engineer, duly licensed
22 under the Washington Professional Engineer's Registration Act
23 and has been issued a license thereunder.

24 3. In reliance upon the design work of defendant engineer
25 SJO for the marina, together with the site plan and dredging
26 plan for such project, as well as the topographic and
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1 hydrographic surveys undertaken by defendant, plaintiff
2 undertook to develop the marina facility, using the services of
3 a dredging contractor to perform such dredging operations.

4 4. Such dredging operations rendered the beach area
5 unstable inasmuch as the steep slopes required under
6 defendant's plans were prone to deterioration by virtue of
7 erosion caused by tidal action. Subsidence of the beach area
8 threatens to disrupt service of the high pressure sewer line of
9 City of Bremerton.

10 5. Defendant engineer SJO committed negligence by one or
11 more of the following acts or omissions:

12 (a) Defendant failed to design adequate and safe
13 plans and specifications for construction of the marina,
14 including incorporation therein of bank protection devices
15 or measures sufficient to arrest erosion from the dredging
16 operations;

17 (b) Defendant issued plans, specifications, designs
18 and/or reports in violation of RCW 18.43.070 in that such
19 documents were submitted without seal for review and
20 acceptance by City of Bremerton despite knowledge that such
21 plans were not complete and were not stamped with the seal
22 of a registered engineer;

23 (c) Defendant failed to investigate and/or provide
24 for adequate slope protection for long-term erosion control
25 of the dredged slopes along the beach frontage adjacent the
26 marina;

1 (d) Defendant failed to prepare or issue safe and
2 adequate plans and drawings relating to dredging of the
3 marina;

4 (e) Defendant failed to retain or consult with
5 skilled professionals knowledgeable of soils engineering
6 with regard to the stability of the beach prior to dredging
7 and the effect of dredging to slopes required by defendants;

8 (f) Defendant failed to communicate to plaintiff the
9 criticality of obtaining soils engineering evaluation of
10 the marina design and deprived the owners and developers of
11 the opportunity to enlist such expertise;

12 (g) Defendant failed to advise plaintiff of the
13 potential for catastrophic loss to the sewer line service
14 of the City of Bremerton and the potential risk of land
15 slide damage to the hillside slope if the aforesaid sewer
16 line failed;

17 (h) Defendant failed to reasonably supervise the
18 marina construction and discover and correct the hazard to
19 the beach area and pipeline therein of City of Bremerton
20 arising from the unsafe and inadequate design for
21 construction of the marina and dredging plan relating
22 thereto;

23 (i) Defendant failed to reasonably inspect the marina
24 construction and detect that the dredging operations
25 undertaken by the dredging contractor pursuant to
26 defendant's plans and drawings weakened the beach area,

1 caused destabilization of the shoreline slope and
2 threatened to expose and disrupt the sewer service of the
3 City of Bremerton;

4 (j) Defendant failed to warn plaintiff of the
5 dangerous propensity of their design for construction of
6 the marina and the lack of conformity of their dredging
7 plan to sound engineering practice.

8 6. By reason of such negligence, defendant engineer SJO
9 breached the standard of professional conduct generally
10 expected of a registered engineer.

11 7. As a direct and proximate result of the aforesaid
12 negligence, plaintiff has suffered substantial damages as
13 herein described.

14 THIRD CAUSE OF ACTION
15 Breach of Warranty

16 1. Plaintiff realleges paragraphs 1 through 7, inclusive,
17 of the First Cause of Action herein and paragraphs 1 through 7,
18 inclusive, of the Second Cause of Action herein and, by
19 reference thereto, makes them part hereof as though fully set
20 forth.

21 2. At all times mentioned herein, defendant engineer SJO
22 held itself out to the public, including plaintiff herein, as
23 skilled and qualified to perform engineering services relating
24 to marina development, design and construction.

25 3. At all times mentioned herein, defendant engineer SJO
26 warranted that its plans and drawings were correct and that
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1 their ordinary intended use for development and construction of
2 the marina would not cause plaintiff damage. Defendant
3 impliedly warranted the sufficiency and adequacy of such plans
4 and drawings to accomplish their intended purpose.

5 4. At all times mentioned herein, plaintiff relied upon
6 the aforesaid representations and warranties made by defendant
7 engineer SJO.

8 5. At all times mentioned herein, defendant breached the
9 aforesaid warranties in that, not by way of limitation, the
10 plans and drawings of defendant SJO were defective for their
11 ordinary and intended use and purpose, concealing the
12 propensity for causing an unreasonably dangerous beach
13 condition. The dredging operations performed pursuant to such
14 plans and drawings caused the beach condition to become
15 unstable and prone to deterioration by virtue of erosion from
16 tidal action. Such condition constitutes a clear and present
17 danger to the high pressure sewer line of the City of
18 Bremerton.

19 6. As a direct and proximate result of the foregoing,
20 plaintiff has suffered the substantial damages herein alleged.

21 H. ALLEGATIONS AS TO DEFENDANT WARD MULLER

22 FIRST CAUSE OF ACTION
23 Professional Negligence

24 1. Defendant Muller is a registered land surveyor having
25 been duly licensed under the Washington Professional Engineers'
26 Registration Act and has been issued a license thereunder.

1 with the result that it has sustained substantial damage as
2 described herein.

3
4 SECOND CAUSE OF ACTION
Breach of Warranty

5 1. Plaintiff realleges paragraphs 1 through 7, inclusive,
6 of the First Cause of Action herein, and, by reference thereto,
7 makes them part hereof as though fully set forth.

8 2. At all times mentioned herein, defendant Muller held
9 himself out to the public, including plaintiff herein, as
10 skilled and qualified to perform surveying services with regard
11 to marina development and construction.

12 3. At all times mentioned herein, defendant Muller
13 warranted that its survey plans, maps and drawings were correct
14 and that their ordinary and intended use for the dredging
15 operations would not cause plaintiff damage. Defendant
16 impliedly warranted the sufficiency and adequacy of such survey
17 plans, maps and drawings for their intended purpose.

18 4. At all times mentioned herein, plaintiff relied upon
19 the aforesaid representations made by defendant Muller.

20 5. At all times mentioned herein, the survey plans, maps
21 and drawings of defendant Muller were defective in that their
22 ordinary and intended use for dredging operations would cause
23 the dredging line to be inaccurately and incorrectly set. Such
24 incorrect and inaccurate representation brought the limits of
25 the dredging operation closer to the shoreline than
26 anticipated, caused the dredging to go deeper than planned, and
27

1 2. Defendant Muller established a dredging line and
2 completed a map or survey for the dredging operations to be
3 accomplished at the marina to create moorage for 80 slips.

4 3. In reliance upon said dredging line and his survey for
5 dredging purposes, plaintiff undertook to develop the marina
6 facility, using the services of a dredging contractor to
7 perform such dredging operations.

8 4. The dredging line established by defendant Muller and
9 the map or survey relating thereto was inaccurate and incorrect
10 in that the base lines as set by defendant Muller did not
11 correctly represent the relationship of a proper dredging line
12 to the outer harbor and inner harbor lines. The dredge line
13 which was erroneously established encroached approximately 14
14 feet closer toward the shore.

15 5. By reason of the aforesaid incorrect and inaccurate
16 survey, the limits of the dredging operation came closer to the
17 shoreline than anticipated, caused a larger quantity of beach
18 materials to be removed and resulted in steeper slopes than
19 originally contemplated. All such factors tended to undermine
20 the stability of the beach and accelerate long-term erosion.

21 6. By reason of his negligence, defendant Muller breached
22 the standard of professional conduct generally expected of
23 those practicing land surveying.

24 7. As a direct and proximate result of the aforesaid
25 negligence, plaintiff has been severely damaged by the
26 inaccurate and incorrect surveying rendered by defendant Muller
27
28

1 created a steeper slope than originally contemplated. All such
2 factors tended to undermine the stability of the beach and
3 accelerate long-term erosion.

4 6. As a direct and proximate result of the foregoing,
5 plaintiff suffered the substantial damages herein alleged.

6 I. PRAYER FOR RELIEF

7 WHEREFORE, plaintiff prays for judgment against the
8 defendants as follows:

9 1. As to defendant carriers, a decree determining their
10 obligations under the policies issued by each to investigate
11 the extent of damage to the marina facilities and third-party
12 property and indemnify plaintiff for the costs of correcting
13 such present and/or future damage;

14 2. Compensatory damages in an amount to be specifically
15 proven at the time of trial, but for purposes of this
16 Complaint, are alleged to be in excess of \$500,000; plus

17 3. Prejudgment interest; plus

18 4. Plaintiff's taxable costs and disbursements herein;
19 plus

20 5. Reasonable attorney fees; plus

6. For such further and other relief as the Court may deem just and equitable.

DATED this 26th day of December, 1985.

FOULDS, FELKER, PIERSON, RYDER &
McHUGH, INC., P.S.

By Thomas S. Felker
Thomas S. Felker

By John A. McHugh

Attorneys for plaintiff

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COMPLAINT FOR DECLARATORY
JUDGMENT AND/OR MONEY DAMAGES--27

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